

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2015

C O R A M

THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

C.M.A.No.3737 of 2010

G.Devaraj

...Appellant/Claimant

Vs.

1. K.Sundararajan

2. New India Assurance Co.Ltd.,
No.45, Moore Street, V - Floor,
Chennai - 1.

... Respondents/Respondents.

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgement and decree, dated 29.02.2008, passed in M.C.O.P.No.2816 of 2003, on the file of the Motor Accident Claims Tribunal/Additional District Judge (Fast Track Court -I), Chennai.

For Appellant : Mr.K.R.Ponnusamy,
for M/s.Anand and Suryas
For 1st Respondent : Ex parte
For 2nd Respondent : Mr.M.Krishnamoorthy

JUDGEMENT

The claimant is the appellant herein. The appeal is filed for enhancement of compensation of Rs.41,018/- awarded against the total claim of Rs.1,75,000/-.

2. The facts that the petitioner/claimant met with an accident due to rash and negligent driving of the driver of the Vehicle, belonging to the first respondent/owner, insured with the second respondent/Insurance Company and the petitioner was, at the time of the accident, aged about 19 years, and he sustained multiple injuries in the accident, besides right leg bone fracture and he was under treatment at Royopettah from 03.05.2003 to 10.05.2003, and thereafter, he underwent native treatment at one of the branch Hospital of Puttoor Bone Setters Hospital, Chennai, having main Office at Chittoor District, Andhra Pradesh, and in spite of the best treatment, the fracture got mal-united, resulting in permanent disability to the petitioner, and difficulty in working and in riding cycle are all made out from the averments raised in the Claim Petition, oral evidence of P.W.1/claimant, Ex.P..4/Discharge Summary, Ex.P.5/Medical receipts, relating to the treatment undergone at

Puttoor Bone Setters Hospital, as well as Ex.P.6/Medical Bills and Ex.P.7/X-ray.

3. Regarding the disability sustained by the petitioner, the same is assessed by P.W.2/Doctor, Thiagarajan, who, after verifying the medical records, advised him to take X-ray to ascertain the present condition, and after personal and physical examination of the petitioner, and on seeing the X-ray, fixed the permanent disability at 35%.

4. The Tribunal, in spite of serious arguments advanced on both sides on the material factors relevant for determining just compensation, did not deem it fit to render any finding regarding the percentage of disability sustained by the claimant and the resultant functional disability of the whole body and the loss of earning capacity due to such functional disability, having regard to the nature of the job or avocation of the claimant. The Tribunal, without any discussion on the material aspects, simply awarded compensation of Rs.41,018, under the following heads:-

i)	Permanent Disability	:	Rs.30,000/-
ii)	Pain and Suffering	:	Rs.5,000/-
iii)	Extra Nourishment	:	Rs.3,000/-
iv)	Transport to Hospital and	:	Rs.2,000/-
v)	Medical Expenses	:	Rs.1,018/-

5. Aggrieved by the same is the present Civil Miscellaneous Appeal before this Court.

6. Heard both sides and perused the records.

7. As already stated above, the nature of injuries and fracture sustained by the claimant and the period of treatment undergone by him and the personal disability are proved through the documents, above referred. Having regard to the same, this Court is of the view that the compensation awarded by the Tribunal for Pain and Suffering, Transport to Hospital and Medical Expenses is too low and the same can be reasonably enhanced. As far as the permanent disability is concerned, the same is assessed at 35% in the right leg. Considering the nature of the job carried on by the claimant, as Old Paper Merchant, earning Rs.150 per month, and considering his age, the extent of the permanent disability and considering the monthly income of the claimant, the same can be, by applying the multiplier method assessed at Rs.85,000/-.

8. This Court, for the discussion above held, is inclined to award compensation under the following heads as follows:-

i)	Loss of partial Income during treatment period	:	Rs.10,000/-
ii)	Transportation to Hospital	:	Rs.5,000/-
iii)	Extra Nourishment	:	Rs.10,000/-
iv)	Medical Expenses	:	Rs.10,000/-
v)	Pain and Suffering	:	Rs.20,000/-
vi)	Permanent Disability and Loss of Earning Power	:	Rs.70,000/-

Total Rs.1,25,000/-

The compensation of Rs.1,25,000/- is payable with interest at 7.5 %. from the date of Petition till date of payment.

9. In the result, the compensation is enhanced from Rs.41,018/- to Rs.1,25,000/- and the entire balance compensation is payable with interest at 7.5% p.a. from the date of Petition till date of deposit. Time for deposit of the enhancement compensation amount is four weeks from the date of receipt of the copy of this judgment. On such payment, the claimant is permitted to withdraw the entire amount. The Civil Miscellaneous Appeal is accordingly allowed. No costs.

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-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The Motor Accident Claims Tribunal/
Additional District Judge (Fast Track Court -I), Chennai.

+ 1 cc to M/s.Anand & Suryas, Advocates SR 41781

+ 1 cc to Mr.M.Krishnamoorthy, Advocate SR 41410

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